



**Ms Aisling Malone** of **Berkshire Hathaway Specialty Insurance** and **Ms Shabnam Karim** of **Norton Rose Fulbright** give an insight into the state of the financial lines market in the region.



#### How would you describe the overall financial lines market in the Middle East?

**Aisling Malone:** The Middle Eastern market for financial lines is best described as a changing one. Historically, Middle East markets have been viewed as low risk from a liability claims perspective due to a relatively benign litigation culture. However, we have seen some large losses over the years.

Middle Eastern companies have become more and more international with globalisation. Regulators and lawmakers are also more active both locally and internationally in recent years. As a result, companies in the region have grown more exposed to liability claims than ever before. This, coupled with adverse global financial lines underwriting results over the past couple of years, as well as more recently the impact of the COVID-19 pandemic, has led to a hardening market for some financial lines products, most notably commercial D&O.

#### Can you give us an overview of the financial lines claims environment in the region?

**Shabnam Karim:** Financial lines specialists continue to be kept busy with claims in the bankers' blanket bond (BBB) and electronic computer crime space. As methods of crime evolve and become more sophisticated, we are seeing increasingly complex claims from this space, especially as perpetrators are increasingly using more technological means to commit crimes and fraud. Another area that has seen tremendous growth over the last five years is D&O liability insurance claims, which is set to grow further in the current climate as companies face financial distress or regulatory scrutiny.

#### What changes are you seeing in the commercial D&O insurance market in particular, and what's driving them?

**Aisling Malone:** The global D&O market has hardened significantly over the past 18-24 months. The increase in US class actions, particularly against foreign filers over the past decade, as well as more aggressive actions from regulators has drastically impacted global D&O loss trends and ultimately the underwriting results of carriers. As a result, many carriers have taken corrective actions including tightening terms and conditions, increasing rates, reducing capacity and in some cases, exiting completely from the D&O market.

The effects of the hardening market are also felt in the UAE and the wider Middle East. After years of broadening coverage and unsustainable premium rates, there is now a clear shift towards tighter terms and conditions, more adequate rates and more conservative deployment of capacity. One reason for this is the fact that claims against directors and officers have increased significantly in recent years due, in part, to changes in the regional risk landscape for D&O such as the introduction of a new class action regime in Saudi Arabia. More recently, the challenging business environment created by the pandemic has led to financial distress for many industries, thus increasing the risk of D&O claims and adding further pace to an already rapidly transitioning market.

#### What claims activity are you seeing in the commercial D&O line?

**Shabnam Karim:** The UAE has the greatest volume of claims in the commercial D&O space but there has been increased claims activity in the last few years in Saudi Arabia, Bahrain, Jordan, Qatar and Kuwait, as well as Lebanon. Saudi

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Arabia, in particular has been an interesting hotspot for D&O claims connected with listed entities. As Aisling has pointed out, a new securities class action regime was introduced in 2017, followed by increased scrutiny by the Capital Market Authority of listed entities on Tadawul.

We have seen a wide range of commercial D&O claims activity, from investor claims of ‘mismanagement’ against directors and officers of companies in distress to claims that stem from criminal or regulatory action against the directors and officers. We have seen civil claims that have arisen against board management individuals for alleged financial wrongdoing where the company has been unable to repay debt to a lender. Claims have also arisen due to investigations initiated by stakeholders, such as private equity investors into businesses alleging financial irregularities prior to their investment.

The last few years have seen an increase in regulatory investigations across the region, which has changed the claims landscape for the directors and officers of Middle Eastern companies. Criminal or regulatory actions increasingly relate to allegations of financial irregularities/ accounting misstatements. There has also been an increase in investigations into alleged fraud, money laundering and embezzlement by directors and officers.

We expect to see a rise in D&O claims notifications to insurers relating to regulatory and criminal investigations, as well as claims which arise due to companies being in financial distress. Finally, the impact of the current challenging business environment created by the pandemic means a heightened risk of stakeholder claims alleging mismanagement against directors, officers and managers, in the event of companies facing financial turmoil.

### What is the state of the market for financial institutions (FIs)?

**Aisling Malone:** The FI market is becoming more challenging in the region. Banks in particular, are seeing rate increases and lost/reduced capacity at renewal as carriers seek to remediate their portfolios. While the crime exposure under BBB policies has historically concerned underwriters in the region, there is now also a heightened focus on the D&O exposure in light of financial uncertainty as a result of COVID-19.

Markets are both reducing capacity and tightening terms as a result of this uncertainty. For example, many carriers are moving away from reinstatements, ‘no claims bonuses’ and ‘long term agreements’ which had become common features of placements during the soft market.

### What is the litigation and liability landscape for FIs?

**Shabnam Karim:** Electronic crime issues continue to present FI claims for insurers and look set to continue at the same pace. The global regulatory landscape is evolving for FIs and this impacts Middle East FIs in many areas, including: whistle blowing; AML/corruption/sanctions; and changes to capital requirements such as those imposed recently in Lebanon.

These areas heighten the risk of FIs incurring liability to and facing litigation from various parties, including regulators, shareholders and customers.

In the Middle East, there have been several high profile regulatory investigations against financial services firms in the DIFC.

With a new data protection regime in force in the DIFC and a cyber-thematic review issued by the DFSA in 2020 for regulated entities, DIFC FIs look set to face increased regulatory scrutiny into the adequacy of their systems and controls, particularly relating to data privacy and cyber preparedness.

### What is the state of the market in professional indemnity (PI)? What trends do you see – and what’s driving them?

**Aisling Malone:** The Middle East PI market is also changing right now. While the approach from carriers varies from profession to profession, rate increases are commonplace. PI programmes for recession-exposed professions in particular are feeling the impact of hardening rates.

Limit deployment is largely reducing and coverage terms are tightening, with coverage offerings such as reinstatements often no longer available and ‘any one claim’ limits being replaced with aggregated limits.

### What activity and claims trends do you see for PI claims?

**Shabnam Karim:** The vast majority of Middle East PI activity continues to be in the construction and engineering arena.

In a non-construction context, we are seeing an increase in PI claims for mis-selling by financial services firms. This is particularly the case for wealth management firms who have come under regulatory scrutiny following customer complaints. We are also seeing an increase in insurance broker PI claims.

Another hot area for PI claims is audit negligence claims, equally against small or large audit firms. There have been several high profile claims, especially in the UAE, following either the administration or financial distress of well-known UAE companies. The historic audits that were conducted of these companies have come under scrutiny and claims against auditors have arisen from administrators, shareholders, investors as well as the FIs that face a financial exposure when the distressed company is in default. In the current economic climate, we expect audit negligence claims to increase in the coming months.

Finally, we have seen an increase in tech PI claims connected with cyber incidents and expect that trend to continue.

### What do you anticipate for commercial, financial institutions and professional service sectors in the region in 2021?

**Shabnam Karim:** Given the current global economic climate, we expect to see increased M&A activity, including business consolidation, restructuring and dissolution. With that, there will be an increased need for products such as warranty & indemnity insurance, cyber and electronic crime insurance cover across all sectors. Finally, regulatory and litigation exposures look set to increase especially where business are facing financial scrutiny or distress. Consequently, we expect increased claims activity in the D&O and PI spaces. 

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